



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

May 6, 1968

The Honorable Robert S. Calvert
Comptroller of Public Accounts
State Capitol
Austin, Texas 78711

Opinion No. M- 228

Re: Taxation for inheritance tax
purposes of devise and bequest
to the members of the Oak Hill
Cemetery Endowment Fund Commit-
tee as a part of the Oak Hill
Cemetery Endowment Fund under
submitted facts.

Dear Mr. Calvert:

We quote the following from your letter requesting
the opinion of this Office on the above captioned matter:

"The decedent⁷ died testate . . . May
11, 1966, and all of the required reports
under the Inheritance Tax Law have been made
and filed with this Department.

"Under the terms of the last will and
testament of the deceased, a bequest of one-
fourth of the remainder of the estate was
made 'to the then members of the Oak Hill
Cemetery Endowment Fund Committee as a part
of the Oak Hill Cemetery Endowment Fund,'
of Flatonia, Fayette County, Texas, in the
sum of approximately \$35,000.00.

". . . We wish to be advised whether or
not this bequest is exempt as provided under
Article 14.015 of Chapter 14, Title 122A,
Taxation-General.

"We are furnishing you herewith the fol-
lowing pertinent papers for your use in this
connection:

"1. Copy of the last will and testament of the decedent7.

"2. Articles of Association - Oak Hill Cemetery Endowment Fund Committee.

"3. Trust Indenture - Oak Hill Cemetery Endowment Fund Committee.

"Brief - submitted by the attorney for the estate7. . ."

We have been advised of the following facts in the brief submitted by the attorney for the Oak Hill Cemetery Endowment Fund Committee, and further verification and history have been supplied by the Mayor of Flatonia and other interested citizens.

The Oak Hill Cemetery is owned by the City of Flatonia, Texas, and is located within its city limits. Chapter IX of the Revised Ordinances for the Government of the City of Flatonia, Texas, was codified and adopted on October 18th, 1907, and provides, among other things, for the appointment of a sexton, sale of lots, burial and keeping of records. Article 137 of these Ordinances reads as follows:

"Article 137. There shall be kept a separate account of all Moneys received from the sale of cemetery lots; and the same shall be used only for the improvement and repairing of the City Cemetery."

The funds realized from the sale of lots and local taxes were not sufficient to properly maintain the Cemetery. In order to assist the City in operating the Cemetery, the Oak Hill Endowment Fund Committee and the Oak Hill Cemetery Association were established on July 8, 1949. The Articles of Association of the Oak Hill Cemetery Endowment Fund Committee recites that seven named persons have associated themselves to form an Endowment Fund Committee. The purpose of the Association is to serve as trustee of such funds as may be donated or as may otherwise come into its possession in conformity with the purposes of any other trust agreement which may be entered into by the Committee and any other persons desiring to create a trust fund of not less than \$500.00 for purposes pertaining to the Oak Hill Cemetery.

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Provision is made for the filling of vacancies in membership of the Committee of the Association in order to provide that the Committee shall be self-perpetuating.

The trust indenture executed by the Oak Hill Cemetery Association of Flatonia recites the granting and delivery of certain properties to the persons who compose the Oak Hill Cemetery Endowment Fund Committee, as trustees, for the purposes previously set out. The total at the time of execution was the amount of \$3,950.00.

Paragraph V declares the purpose of the trust which may be briefly summarized and quoted as follows:

(1) The principal of the Endowment Fund is to be kept intact forever.

"(2) So much of the income from such Oak Hill Cemetery Endowment Fund as may be necessary for such purpose shall annually be used by the trustees for the maintenance of the lots hereinafter enumerated and specified, and for the upkeep and maintenance of such other lots as may hereafter be provided for by donations to the Oak Hill Cemetery Endowment Fund as hereinafter provided."

(3) Any income from the Endowment Fund which is not expended for the purposes set out in paragraph (2) shall become a part of the corpus of the Oak Hill Cemetery Endowment Fund.

"(4) It is contemplated that the trustees may annually pay over the income from the Oak Hill Cemetery Endowment Fund to the Oak Hill Cemetery Association and rely upon such association to maintain the lots for the maintenance of which this fund is created."

Paragraph VI sets out the specified lots for the maintenance of which the income from the Endowment is to be expended and enumerates on the official plat of said Cemetery each specified amount following the date of the donation, the donor's name and lot name and the plat number of the lot.

Paragraph IX provides that upon receipt of donations of not less than \$100.00 the trustees shall include in the lots to be maintained out of the income of the Endowment Fund any half lot specified by the donor; and further that, upon receipt of donations in the amount of not less than \$200.00, the trustees shall include the lots to be maintained out of the income from the Fund any full lot specified by the donor.

Paragraph X reads as follows:

"The Oak Hill Cemetery Endowment Fund Committee, being the trustees herein, is a voluntary association of individuals for the purpose of serving as trustees under the provisions of this indenture, as well as to serve as trustees under other agreements relating to the Oak Hill Cemetery; and the Articles of Association of such Committee are attached hereto and made a part hereof as fully as though copied herein verbatim."

Article 14.015, Ch. 14, Title 122A, 20A, Tax.-Gen., V.A.T.S., enumerates the transfers which are exempt from inheritance taxes. If the devise and bequest here under consideration is to be exempt, it must come within the provisions of subdivision (3) of Article 14.015. This provision reads as follows:

"Public Use. Property transferred to or for the use of this state or any town therein for public purposes."

Although under the terms of the trust indenture the income from the trust fund is to be expended only for maintaining specified graves within the Cemetery rather than all graves within the Cemetery, we hold that since title to the Cemetery lots is vested in the City of Flatonia, the authorized expenditures are for a public purpose and do relieve the City of Flatonia of a duty and an obligation imposed by Article 137 of the City Ordinances.

Subdivision (3), above quoted, has never before been construed since its enactment in 1965. Acts 59th Leg., Ch. 402, p. 830. Clearly, the use of the income from the trust will be a use for the benefit of the City of Flatonia and

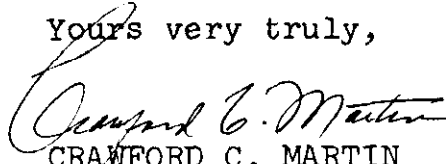
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therefore a use for a public purpose. Thus, we conclude that the devise and bequest in question is exempt from inheritance taxes and you are accordingly so advised. This opinion is expressly limited to the facts presented and is not to be construed as applying generally to devises and bequests to non-profit cemetery associations.

SUMMARY

Devise and bequest to the members of the Oak Hill Cemetery Endowment Fund Committee as a part of the Oak Hill Cemetery Endowment Fund is exempt from inheritance tax under the submitted facts.

Yours very truly,


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APPROVED:

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